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March 9, 2012

*via hand delivery*

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TW-A325  
Washington, DC 20554

FILED/ACCEPTED

MAR - 9 2012

Federal Communications Commission  
Office of the Secretary

**Attn: CGB Room 3-B431**

**Re: First United Methodist Church, Jefferson City, Missouri  
Request for Exemption from the  
Commission's Closed Captioning Rules  
Case No. CGB-CC-0135  
CG Docket No. 06-181**

Dear Ms. Dortch:

Pursuant to the Commission's Request for Comment, Telecommunications of the Deaf and Hard of Hearing Inc. (TDI), the National Association of the Deaf (NAD), the Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN), the Association of Late-Deafened Adults (ALDA), and the Cerebral Palsy and Deaf Organization (CPADO), collectively, "Consumer Groups," respectfully submit this Opposition to the petition of First United Methodist Church, Jefferson City, Missouri ("FUMCJC") to exempt its programming from the Commission's closed captioning rules, 47 C.F.R. § 79.1 (2010).<sup>1</sup> Consumer Groups oppose FUMCJC's petition because the information

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<sup>1</sup> *Public Notice, Request for Comment: Request for Exemption from Commission's Closed Captioning Rules, First United Methodist Church, Jefferson City, Missouri, Case No. CGB-CC-0135, CG Docket No. 06-181 (Feb. 10, 2012),* [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2012/db0210/DA-12-178A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0210/DA-12-178A1.pdf); *Petition for Exemption from Closed Captioning Requirement for First United Methodist Church, Jefferson City, Missouri, Case No. CGB-CC-0135, CG Docket No. 06-181*

provided does not demonstrate that FUMCJC cannot afford to caption its programming.

Consumer Groups acknowledge the efforts of FUMCJC to “[reach] out and [spread] the word of God to those . . . who cannot physically attend worship services for varying reasons.”<sup>2</sup> The requested exemption, however, would deny equal access to FUMCJC’s important programming for deaf and hard of hearing members of FUMCJC’s community. In fact, FUMCJC has identified homebound and elderly viewers as a segment of its community that its programming is designed to benefit.<sup>3</sup> This constituency is one that may distinctly benefit from the inclusion of closed captions. Maximizing accessibility through the comprehensive use of closed captions is a critical step in ensuring that all members of the community who are deaf or hard of hearing can experience the important benefits offered by such programming on equal terms with their hearing peers.

Because the stakes are so high for the millions of Americans who are deaf or hard of hearing, it is essential that the Commission grant petitions for exemptions from captioning rules only in the rare case that a petitioner conclusively demonstrates that captioning its programming would impose a truly untenable economic burden. To make such a demonstration, a petitioner must present detailed, verifiable, and specific evidence that it cannot afford to caption its programming, either with its own revenue or with alternative sources.

Under section 713(d)(3) of the Communications Act of 1934 (“1934 Act”),<sup>4</sup> as added by the 1996 Act and amended by section 202(c) of the CVAA, “a provider of

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(Jan. 17, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021755415> [hereinafter *FUMCJC Petition*].

<sup>2</sup> *FUMCJC Petition*, *supra* note 1, at 2.

<sup>3</sup> *Id.*

<sup>4</sup> Pub. L. No. 416, ch. 652, 48 Stat. 1064 (1934) (codified as amended at 27 U.S.C. 613(d)(3)).

video programming or program owner may petition the Commission for an exemption from the [closed captioning] requirements of [the 1934 Act], and the Commission may grant such petition upon a showing that the requirements . . . would be economically burdensome.” In its October 20, 2011 Interim Standard Order, the Commission directed the Consumer and Governmental Affairs Bureau to evaluate all exemption petitions filed subsequent to October 8, 2010 using the “undue burden” standard in section 713(e) of the 1934 Act, pursuant to the Commission’s existing rules in 47 C.F.R. § 79.1(f)(2)-(3).<sup>5</sup>

To satisfy the requirements of section 713(e), a petitioner must first demonstrate its inability to afford providing closed captions for its programming.<sup>6</sup> More specifically, a petitioner must first demonstrate its inability to afford providing closed captions for its programming.<sup>7</sup> If a petitioner sufficiently demonstrates such an inability, it must also demonstrate that it has exhausted alternative avenues for obtaining assistance with captioning its programming.<sup>8</sup> Where a petition fails to make either of the foregoing

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<sup>5</sup> *Order, Interpretation of Economically Burdensome Standard*, CG Docket No. 06-181, 26 FCC Rcd. 14,941, 14,961, ¶ 37 (Oct. 20, 2011), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db1123/FCC-11-159A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1123/FCC-11-159A1.pdf). The Commission proposed to finalize this interim directive in a Notice of Proposed Rulemaking released with the 2011 ISO. *Interpretation of Economically Burdensome Standard*, CG Docket No. 11-175, 26 FCC Rcd. 14,941, 14,961-62, ¶¶ 38-39 (proposed Oct. 20, 2011), 76 Fed. Reg. 67,397 (Nov. 1, 2011), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/011/db1123/FCC-11159A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/011/db1123/FCC-11159A1.pdf). See also 2011 ISO at 14,960, ¶ 36. In some early adjudications, the Commission specifically analyzed exemption petitions under the four-factor rubric in section 713(e), analyzing whether each of the four factors weighed for or against granting a particular petition. E.g., *Home Shopping Club L.P.*, Case No. CSR 5459, 15 FCC Rcd. 10,790, 10,792-94 ¶¶ 6-9 (CSB 2000). Over the past decade, however, this factor-based analysis has evolved into several specific evidentiary requirements that must be satisfied to support a conclusion that a petitioner has demonstrated an undue economic burden sufficient to satisfy the requirements of section 713(e). See *Anglers for Christ Ministries*, Case Nos. CGB-CC-0005 and CGB-CC-0007, CG Docket No. 06-181, 26 FCC Rcd. 14,941, 14,955-56, ¶ 28 (Oct. 20, 2011) [hereinafter *Anglers 2011*].

<sup>6</sup> See *Anglers 2011*, *supra* note 5, 26 FCC Rcd. at 14,955-56, ¶ 28.

<sup>7</sup> See *id.*

<sup>8</sup> See *id.*

showings, it fails to demonstrate that providing captions would pose an undue burden, and the Commission must dismiss the petition.<sup>9</sup>

#### **I. FUMCJC's Ability to Afford Captioning**

To sufficiently demonstrate that a petitioner cannot afford to caption its programming, a petition must provide both detailed information regarding the petitioner's financial status and verification that the petitioner has diligently sought out and received accurate, reasonable information regarding the costs of captioning its programming, such as competitive rate quotes from established providers.<sup>10</sup> Both showings are essential to enable the Commission and the public to verify that the petitioner in fact cannot afford to caption its programming and eliminate the possibilities that captioning would be possible if the petitioner reallocated its resources or obtained more reasonable price quotes for captioning its programming.

A successful petition requires, at a bare minimum, detailed information regarding the petitioner's finances and assets, gross or net proceeds, and other documentation "from which its financial condition can be assessed" that demonstrates captioning would present an undue economic burden.<sup>11</sup> To the contrary, FUMCJC's supplied financial information for 2011 shows a \$40,000 surplus, more than enough to caption its programming at its quoted annual cost of 13,000.<sup>12</sup>

FUMCJC claims, however, that "in order to fund any increase [for closed captioning costs], other vital First United Methodist Church programs would necessarily suffer."<sup>13</sup> But the Commission does not consider "the extent to which the provision of captioning would curtail other activities important to a petitioner's

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<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

<sup>11</sup> E.g., *Survivors of Assault Recovery*, Case No. CSR 6358, 20 FCC Rcd. 10,031, 10,032, ¶ 3 (MB 2005), cited with approval in *Anglers 2011*, *supra* note 5, 26 FCC Rcd. at 14,956, ¶ 28 n.100.

<sup>12</sup> FUMCJC Petition, *supra* note 1, at Exhibits G-M.

<sup>13</sup> *Id.* at 5.

mission.”<sup>14</sup> Rather, the Commission “balance[s] the need for closed captioned programming against the potential for hindering *the production and distribution of programming*.”<sup>15</sup> FUMCJC has not presented any evidence that providing captions would hinder the production and distribution of the programming itself.

## **II. Alternative Avenues for Captioning Assistance**

Even where a petition succeeds at demonstrating that a petitioner cannot afford to caption its programming, the petitioner must also demonstrate that it has exhausted all alternative avenues for attaining assistance with captioning its programming.<sup>16</sup> FUMCJC presents no information suggesting that it has sought financial assistance from its distributor. The petition also contains no indication that FUMCJC has solicited sponsorships or other sources of revenue to cover the cost of captioning its program.

## **III. FUMCJC Does Not Qualify for the Local, Non-News Exemption**

FUMCJC also argues that the local, non-news exemption to the closed captioning rules should apply to FUMCJC’s program.<sup>17</sup> The Commission has made clear that the categorical exemption for a section 79.1(d)(8) exemption specifically requires that such “locally produced and distributed non-news programming be produced by the *video programming distributor*, not programmers.”<sup>18</sup> FUMCJC does not qualify for this exemption because it is not a video programming distributor.

## **IV. Conclusion**

FUMCJC’s petition fails to conclusively demonstrate that it cannot afford to caption its programming or that it has exhausted all available alternatives for providing captions. Because the petition fails to establish that it would be unduly burdensome for

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<sup>14</sup> See *Anglers 2011*, *supra* note 5, 26 FCC Rcd. at 14,951, ¶ 20 (internal quotations omitted).

<sup>15</sup> *Id.* (emphasis in original).

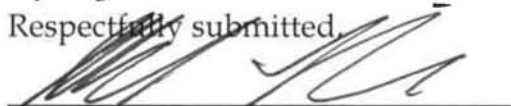
<sup>16</sup> See *Anglers 2011*, *supra* note 5, 26 FCC Rcd. at 14,955-56, ¶ 28 (internal citations omitted).

<sup>17</sup> *FUMCJC Petition*, *supra* note 1, at 5-6.

<sup>18</sup> See *Anglers 2011*, *supra* note 5, 26 FCC Rcd. at 14,950, ¶ 17 n. 63 (emphasis added).

FUMCJC to caption its programming under the high standard demanded under the 1996 Act and the CVAA, we respectfully urge the Commission to dismiss the petition.

Respectfully submitted,



Blake E. Reid, Esq.<sup>†</sup>

March 9, 2012

*Counsel for Telecommunications for the  
Deaf and Hard of Hearing, Inc.*

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**Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)**

\_\_\_\_\_/s/\_\_\_\_\_  
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**National Association of the Deaf (NAD)**

\_\_\_\_\_/s/\_\_\_\_\_  
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<sup>†</sup> Counsel thanks Georgetown Law student clinicians Allyn Ginns and Cathie Tong for their assistance in preparing these comments.

**Deaf and Hard of Hearing Consumer Advocacy Network (DHHCAN)**

          /s/          

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**Association of Late-Deafened Adults (ALDA)**

          /s/          

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**Cerebral Palsy and Deaf Organization (CPADO)**

          /s/          

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### **CERTIFICATION**

Pursuant to 47 C.F.R. § 1.16 and 79.1(f)(9), I, Claude Stout, Executive Director, Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), hereby certify under penalty of perjury that to the extent there are any facts or considerations not already in the public domain which have been relied in the foregoing Opposition, these facts and considerations are true and correct to the best of my knowledge.

A handwritten signature in cursive script that reads "Claude L. Stout".

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Claude Stout  
March 9, 2012



### **CERTIFICATE OF SERVICE**

I, Niko Perazich, Office Manager, Institute for Public Representation, do hereby certify that, on March 9, 2012, pursuant to the Commission's aforementioned Public Request for Comment, a copy of the foregoing Opposition was served by first class U.S. mail, postage prepaid, upon the petitioner:

First United Methodist Church  
201 Monroe St.  
Jefferson City, MO 65101

A handwritten signature in black ink, appearing to read "Niko Perazich", written over a horizontal line.

Niko Perazich  
March 9, 2012